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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

NO. 372

PAUL GINSBURG, Petitioner

v.

HON. PHILIP L. SULLIVAN, Judge of the United States District Court for the Northern District of Illinois, Eastern Division, and HON. ROY H. JOHNSON, Clerk of the United States District Court for the Northern District of Illinois, Eastern Division

PETITION FOR REHEARING

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PETITION FOR REHEARING

To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

The petition for rehearing of Paul Ginsburg respectfully represents:

1. On November 10, 1958, upon consideration of the Petition for Writ of Certiorari, respondents' Answer to Petition for Certiorari and petitioner's Reply Brief, this Honorable Court denied the petition.

2. Involved herein is the right of petitioner to the protection and enforcement of his civil rights as guaranteed by the Constitution and laws of the United States. His said rights include, but are not limited to, the right to work and earn a living in one's chosen occupation and profession, the right to be paid compensation for work done and services rendered in one's chosen occupation and profession, and, upon the deprivation of the said

rights, the right to litigate with due process of law to protect and enforce them. This Court's said denial of certiorari has been construed in line with the popular misconception that the only civil rights which exist and are the subject of federal protection and enforcement are the two rights actively litigated lately by political groups which rights are peculiar to some Negroes in some Southern States: the right to vote and the right to attend an integrated school. Has the popular misconception become the Law of the Land?

3. Primarily involved herein is petitioner's right to litigate with due process of law to protect and enforce his other rights. As a matter of record it is manifest that petitioner was denied his fundamental right to a day in Court in advance of the District Court's illegal entry of summary judgment; then, upon his legal reopening of the action therein, the respondent Clerk refused to file and make appropriate Docket Entries of the pleadings and the respondent Judge refused to enter Orders thereon. **The one pleading which Judge Sullivan refused to order filed or to act upon** was a Motion for Leave to Amend Complaint in order to conform the complaint to the Opinion of the Court of Appeals; and, the **other pleading which Judge Sullivan refused to order filed or to act upon** was a Motion for Change of Venue in the interests of justice. Petitioner's experiences in the District Court particularly under Hon. Philip L Sullivan, have convinced him that he cannot expect compliance with the Federal Rules of Civil Procedure and the applicable law; just as he cannot expect the Court of "Appeals" to enforce same therein; however, in this particular case the petitioner came before this Honorable Court feeling so safe and confident, not only under

the Constitution and laws but also this Court's powers of supervision. Under such circumstances your disappointed petitioner cannot be at all described as naive or unrealistic, because even the most seasoned and hardened practitioner would express surprise at this Court's denial of relief herein, particularly at a time when the ink is hardly dry on its opinions in *Cooper, et al., v. Aaron, et al.*, at No. 1 August Special Term, 1958.

4. This Court's denial of the instant petition and its predecessor petition at No. 788 October Term, 1956, as well as its denial of your petitioner's Petition for Writ of Certiorari at No. 834 October Term, 1957, in an action brought under the Fourteenth Amendment and the Civil Rights Acts, is actually *a public as well as a private problem.* Although the problem is obvious, it did not become real until the decisions in your petitioner's said cases were made known to all concerned in the litigation involving Central High School at Little Rock, Arkansas, through petitioner's letter dated September 27, 1958, a copy of which is annexed hereto. The problem is the enforcement of the Law of the Land. The question then arose as to what is the Law of the Land. Prior to petitioner's disclosure as aforementioned President Eisenhower thought and Arkansas Governor Faubus feared that this Court's pronouncements in *Cooper et al., v. Aaron, et al.*, at No. 1 August Special Term, 1958, were the Law of the Land. After petitioner's disclosure, however, their advice changed. A serious doubt arose. Perhaps the Law of the Land was evidenced in this Court's decisions in the three aforesaid cases of your petitioner. If so, then it is the Law of the Land that White citizens who are sincerely pro-American cannot secure the protection and enforcement of any of their

federal constitutional and civil rights "guaranteed" by the Fourteenth Amendment and the Civil Rights Acts. Would it not necessarily follow that the Civil Rights Acts are special legislation and hence unconstitutional?

5. Last year the Attorney General of the United States informed President Eisenhower that this Honorable Court enforces and protects the federal constitutional and civil rights for all alike regardless of race, color and creed; and then advised the President to dispatch the Military to Little Rock to enforce the civil rights of nine children, the cost of which is estimated at $5,000,000.00. This year your petitioner notified President Eisenhower that he was misinformed and ill advised, since which time the President has not lifted a finger let alone sent a soldier. Since the entry of this Court's decision at No. 1 August Special Term, 1958, hardly a week has gone by that President Eisenhower has not been publicly criticized for not actively enforcing this Court's mandate; but little do those uninformed critics know how the President's hands are tied. His inactivity is through no fault of his own. The President of the United States of America is sincerely interested in enforecement of all civil rights; but he has recently decided, being fully informed, that he will have no part of it on a discriminatory basis.

6. Can the Federal Government of President Lincoln now effectively tell a State Government of the South, "Do as I say, but not as I do"? Can Governor Faubus sincerely be expected to accept the Federal mandate from Washington and to reject his State mandate from the People of Arkansas, on orders of "Do as I Say" justice? Is the Federal Government in the North legally entitled to force a State Government in the South to

clean up its backyard before it has done so in its own? Is not government by example the the most effective and the easiest to enforce?

7. At the bottom of our problem could very well be an actual minority rule through pressures. Although we technically are governed by majority rule, through dilutions and squeezes from within and without we have become subjected to the minority rule and the clearest manifestation of this point has become evidenced in the Law of the Land as dispensed in recent years. In *Cooper v. Aaron, supra,* Mr. Justice Frankfurter conceded in his extra concurring Opinion that we all have the right to criticize. In view of this Court's decisions in petitioner's cases, he feels that the right to criticize is the only right he has left and seeks to exercise it herein for what it is worth. Petitioner indeed has not been allowed the right to know. Do we have more democracy and freedom under minority rule, or less? Just as your petitioner is justified in wondering if Liberals have become bigoted towards Conservatives, could not Governor Faubus now be heard to query, Who is bigoted now? Would it not be a blessing in disguise, if the minority rule were arrested for speeding before an impending crash that might wreck the vehicle?

8. A long series of costly disappointments during the past several years in the name of the Law of the Land has impelled your petitioner to utter this last word through the instant Petition for Rehearing, knowing full well that although Rule 58 provides for rehearing, it is merely illusory as a right and positively atrophic as a remedy.

9. It is respectfully submitted that another popular misconception should be corrected, and the miscon-

ception is that our Nation is a "Democracy". This Court knows that our Nation is a Republic, the distinction being that the rights of minorities in a Republic are protected by Constitutional guarantees, whereas in a Democracy there is simply majority rule. Therefore, in laying down the Law of the Land, this Honorable Court is bound to protect the rights of the majority as well as the rights of minorities, lest it be criticized for being undemocratic. It necessarily follows that this Court is bound to protect and enforce the guaranteed rights of the rich as well as the poor, the good as well as the bad, the Christian as well as the Atheist, the white as well as the colored, the anti-communist and well as the Communist, and the gentleman as well as the gangster. Therefore, this Court has no alternative but to protect and enforce all the rights of which your petitioner has been deprived as set forth in the petitions filed in his three aforementioned actions in this Court.

Wherefore, your petitioner prays that this Honorable Court grant a rehearing to prevent a serious failure of justice herein, and further to obviate the need for a subsequent proceeding by your petitioner.

PAUL GINSBURG,
Counsel for Petitioner.

CERTIFICATE OF COUNSEL

I hereby certify that the foregoing Petition for Rehearing is presented in good faith and not for delay; and that it is restricted to the grounds specified in paragraph 2 of Rule 58.

PAUL GINSBURG,
Counsel for Petitioner.

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His Excellency, Dwight David Eisenhower,
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Washington, District of Columbia

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Honorable Sirs:

The enclosed petition in my action against Hon. Philip L. Sullivan and Hon. Roy H. Johnson in the Supreme Court at No. 372 October Term 1958, discloses high federal authority for the right of a court clerk to decide to keep off the record, pleadings which are lodged with him for filing, as well as the right of a judge to refuse to render decisions thereon. The conclusion (pp. 12-13) shows how the denial of my petition could backfire upon the federal government in its controversy with the State of Arkansas, because the Clerks of State and Federal Courts in Arkansas, if so inclined, would then be justified in deciding not to file the government's pleadings to effectuate integration, and if judges condescended to allow a presentation, they could then decide not to render decisions thereon; all denying due process of law, the right of appeal and even the right to litigate.

The denial of my petition against Horace Stern, et al., at No. 834 October Term 1957 by the Supreme Court could be used as authority for the point that members of the judiciary are not liable in suits under the Civil Rights Acts, thus permitting State Judges of Arkansas, so inclined, to deprive residents of that State of their civil rights without any fear whatever of being brought to justice. My prior suit against Horace Stern, et al., recently reopened in the District Court for the Western District of Pennsylvania at Civil Action No. 12643 is also authority for that point in spite of the opinion of Chief Judge Wallace S. Gourley expressed therein that the actions of the defendants were "violative of basic concepts of justice".

The foregoing samples of repeated deprivations of civil rights in the North as well as the right to litigate to secure the protection and enforcement thereof, reflect the Government's discriminatory, erroneous, political policy of protecting and enforcing only the right to vote and the right to attend an integrated school. The Government overlooks, ignores and even considers business as usual, daily deprivations of the right to work and earn a living in one's chosen occupation or profession, the right to compensation for work done or services rendered therein, and upon deprivation of those rights, the right to litigate with due process of law to protect and enforce those rights. That is why I testified before the Senate Committee on the Judiciary against confirmation of Hon. W. Wilson White to head the Civil Rights Division of the Department of Justice. Although the Department Order of December 9, 1957, creating the Division, expressed the purpose of enforcing all federal civil rights statutes, Mr. White would not even investi-

gate any violations except those peculiar to Negroes of the South. It was my position then that if Mr. White were correct about his duties, the Civil Rights Division should be abolished for being based upon special legislation which is unconstitutional. It is my legal opinion and I advocate that the Federal Civil Rights Acts were enacted for all of us in the United States regardless of race, color or creed. The contrary opinion of the Attorney General of the United States would render them special legislation for the benefit of Negroes in the South only and hence unconstitutional. It necessarily follows that if said Civil Rights Division is not abolished, its name should be corrected to Political Action Division.

The fact that Mr. White advised the President to send troops into Arkansas at an estimated cost of $5,000,000.00 to protect the civil rights of nine children, and would not even investigate the deprivations of my rights at no cost, was most distressing. To show the insincerity of political advocates of civil rights on a discriminatory basis, I explained that the Judges in the North who deprived me of my civil rights were not all white. Two Negro jurists, who were entrusted with the protection and enforcement of my civil rights and deprived me thereof, are Circuit Judge William H. Hastie of the United States Court of Appeals for the Third Circuit sitting at Philadelphia and Justice Harold A. Stevens of the Supreme Court of the State of New York sitting at New York City.

Because I am white and anti-Communist, and hence do not qualify for the powerful support of the National Association for the Advancement of Colored People and the American Civil Liberties Union, must I remain the Forgotten Northerner of the Unconstitutional Fifties?

Having already suffered illegal deprivations of my good name, fame, reputation and millions of dollars, must that be followed ad infinitum by contemptible ridicule of my courageous attempts to litigate alone with due process of law under the Constitution, the procedural rules and the law of the land? Did the inflationary spiral in our economy have to be accompanied by the deflationary one in our administration of justice?

I have endeavored to take no sides in the political issues involved, but to express to both sides the facts which I know, as an independent American who believes that the issue of civil rights should not be one for the North against the South or the Republicans against the Democrats, but one which should be considered indivisibly by all of us as a national problem to the end that we shall be able to command the respect of foreign nations as well as of ourselves.

Respectfully submitted,

PAUL GINSBURG
Carlton House
Pittsburgh 19, Pa.

27 September 1958